

CENTRAL INTELLIGENCE AGENCY

ogc 73-1836

WASHINGTON, D.C. 20505

Approved For Release 2002/05/17 : CIA-RDP75-00793R000100270008-2

OGC Has Reviewed

25 September 1973

Capt. L. E. Hopkins, SC, USN
Chairman, ASPR Committee
Office of the Assistant Secretary of Defense
Washington, D. C. 20301

Dear Capt. Hopkins:

Thank you for inviting our comments on the proposed legislation to revise government procurement law. Two bills were forwarded -- H.R. 9061 and the ASPR bill of 3 August 1973.

We have no difficulty with the bills to the extent that they modify, simplify and improve procurement law. Our primary concern is to be certain that the authority of the Agency to undertake activities necessary to its functions not be impaired by enactment of the new legislation.

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Section 20 of the ASPR bill contains highly desirable authority permitting the President to authorize the making or amending of contracts without regard to "other laws" relating to the making of contracts. Since this bill would repeal most, if not all, other laws relating to contracts, retention of the word "other" in this context would seem to negate the purpose of section 20, that is, it would permit the President to authorize procurement without regard to nonexistent laws relating to contracting. The intent of section 20 surely is that the President be authorized to provide for contracting

without regard to any law, including this bill. We would suggest the term become "this or any other laws".

We would also suggest section 20 be recommended for inclusion in H.R. 9061 if that bill goes forward.

There may be some conflict or confusion in sections 6, 7, 8, and 9. Section 6 is permissive -- small purchase contracts "may be" negotiated under that section. Under section 7, contracts not negotiated under section 6 "shall be" by formal advertising. Under section 9 contracts "may be" made by non-competitive negotiation, and thus conflicts with section 7. Section 8 provides that contracts may be by competitive negotiation except "as provided by sections 6, 7, and 9", which also appears to conflict with section 7. A solution would be as follows:


(a) revise section 7 to read "Contracts not negotiated under the provisions of sections 6, 8, and 9" etc., and

(b) revise section 8(a) by deleting the reference to sections 6, 7, and 9.

Thus, sections 6, 8, and 9 would be in permissive terms and all other contracting would be mandatory under section 7.

We note also that in section 5 the subsections should be designated by letters, rather than numbers. Also, the phrase "as provided by sections 6, 7, 8, and 9" should be set out as a part of section 5, but not part of subsection (4).

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John S. Warner
Acting General Counsel

OGC:RHL:cav

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OGC 73-1777
19 September 1973

MEMORANDUM FOR: Chief, Procurement and Management Staff, OL
SUBJECT : Procurement Legislation

1. Your memorandum of 13 September 1973 requests our views on certain aspects of the proposed legislation to revise government procurement law. There are two bills, one being H. R. 9061 and the other a draft of 3 August 1973 prepared by the ASPR Committee under the chairmanship of the Pentagon (Captain Hopkins).

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4. The ASPR bill, also in section 3, contains the same language quoted above from H. R. 9061 and the same conclusions and suggestions apply. But the ASPR bill also contains, in section 20, extraordinary contract authority not provided by H. R. 9061. Section 20(a) of the ASPR bill authorizes the President to authorize any federal agency to contract "without regard to other laws relating to the making, performance, or amendment of contracts". A contract or amendment for more than \$50,000 may not be made under that subsection without approval by the agency head or by a "contract adjustment or other board". But the agency head may delegate this authority. See section 22. Section 20 would seem to provide ample opportunity for the President to grant to this Agency whatever procurement authority may be necessary. I suppose we should seek to amend the ASPR bill by the same language suggested for H. R. 9061, having in mind that section 20 may or may not survive.

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5. With reference to the specifics in your paragraph 2:

a. The reference to the Department of Defense contract and appropriated funds would mean that any contracts entered into by this Agency for the Department of Defense involving other than appropriated funds — if there are any such contracts — would not be subject to the Act. All other contracts entered into by or for the Agency would be.

b. With reference to your inquiry concerning the requirement for formal advertising, the ASPR bill seems somewhat fuzzy or inconsistent. Section 6 permits special procedures for small purchase procurements. Section 7 provides that contracts not negotiated under section 6 shall be made by advertisement when, under departmental regulations, certain factors, including "national security interests", are appropriate for the use of formal advertising. Section 8 provides that except as provided by sections 6, 7, and 9, contracts "may be made" (emphasis supplied) by competitive negotiation under that section. And section 9 provides for contracting by noncompetitive negotiation when there is appropriate determination that "competition is impracticable". Thus, under section 7, we could conclude that national security considerations are such that advertising is not appropriate. This would permit competitive negotiation, as provided in section 8. And if "competition is impracticable" noncompetitive negotiation under section 9 could be utilized. Although the several sections, I believe, permit the conclusion that impracticability may derive from national security considerations, it would be well to modify section 9 to make certain that the bill so intends.

c. Section 15, I believe, does not require special consideration for Agency shipments. To the contrary, Agency contracts, like all other government contracts other than certain Department of Defense contracts, may not specify the size of containers. If we do want to be able to specify size, the Secretary of Defense, in some instances at least, might be willing and able to make the necessary determinations for us. Or we could suggest revising the language of section 15: "unless a department or agency head determines that military or national security requirements necessitate specification of container sizes."

d. With reference to the inspection by federal agencies authorized by section 19(a), it probably would be necessary to coordinate with the inspecting agency in order to preserve the security of classified Agency contracts.

Similarly, the authority of the Comptroller General in section 19(c) would raise some problems in connection with protecting security and no doubt would adversely effect the Agency's position of excluding the Comptroller General from audit.



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Associate General Counsel

Attachment

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Orig Addse

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✓ 1 - OGC Subj: CIA ACTS AND STATUTES

1 -  Signer

1 - Chrono

1 September 1971

Mr. O. S. Hiestand
General Counsel
Commission on Government Procurement
1717 H Street, N. W.
Washington, D. C. 20006

Dear Mr. Hiestand:

It was a pleasure to meet you last week and have the opportunity to discuss in general the work of the Commission, particularly as it may pertain to this Agency.

With respect to your letter received 22 July 1971, it was agreed that a reply in general terms would be an adequate response to the detailed questions set forth therein.

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In this connection, we believe that in all likelihood we could satisfactorily conduct most of our procurement under whatever provisions are recommended by the Commission to replace the authorities now at 41 U.S.C. 251-260 or 10 U.S.C. 2301-2314. However, for cases involving our unusual operating authorities or having security implications, it would be desirable to retain, in any legislation which might be enacted, a provision similar to that now at 40 U.S.C. 474(17).

We are in sympathy with the objectives of your Commission and will be glad to assist any way we can, but, as stated above, we would like to be assured of some flexibility in order to properly handle our special procurement situations.

We repeat our offer to make available to your staff
our computerized legal program.

25X1A

Sincerely,

[Redacted Signature]

Acting General Counsel

CONCURRENCE:

John F. Blake by telephone 9/1/71
Director of Logistics

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Drafted: OGC: [Redacted]
Retyped: OGC:jeb

Distribution:

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1-DDS

1-D/Logistics

1-Associate General Counsel- [Redacted]

2-General Counsel

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13 SEP 1973

MEMORANDUM FOR: Associate General Counsel

SUBJECT : Proposed Legislation to Provide Policies
and Procedures for the Procurement of
Property and Services by Federal Agencies

1. We have reviewed the proposed legislation to determine the possible effects upon our Agency procurement system in the event a version of the attached bill should be adopted. There are specifics in the proposed bill and ASPR Committee draft version which we think should be clarified to determine their intent and probable implementation. Some of the questions we have in mind are listed below. Overall, each of these two similar proposed bills extends the authority and provides additional flexibility to procurement, particularly in small purchase procedures.

2. The following areas in the ASPR Committee version are among those which, from a procurement viewpoint, may need clarification:

a. Page 2: Section 3 concerning the applicability to Department of Defense "only when payable from appropriated funds." What if any affect on the Agency funding?

b. Page 4: Section 7 Formal Advertising. Will this be mandatory for the Agency and, if so, what affect will Agency security have upon the requirement for formal advertising?

c. Page 9: Section 15. Does this section on cargo container specifications require special consideration for Agency shipments?

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d. Page 11: Section 19(a) Will the security of

What affect will this provision have on the Agency's long held position?

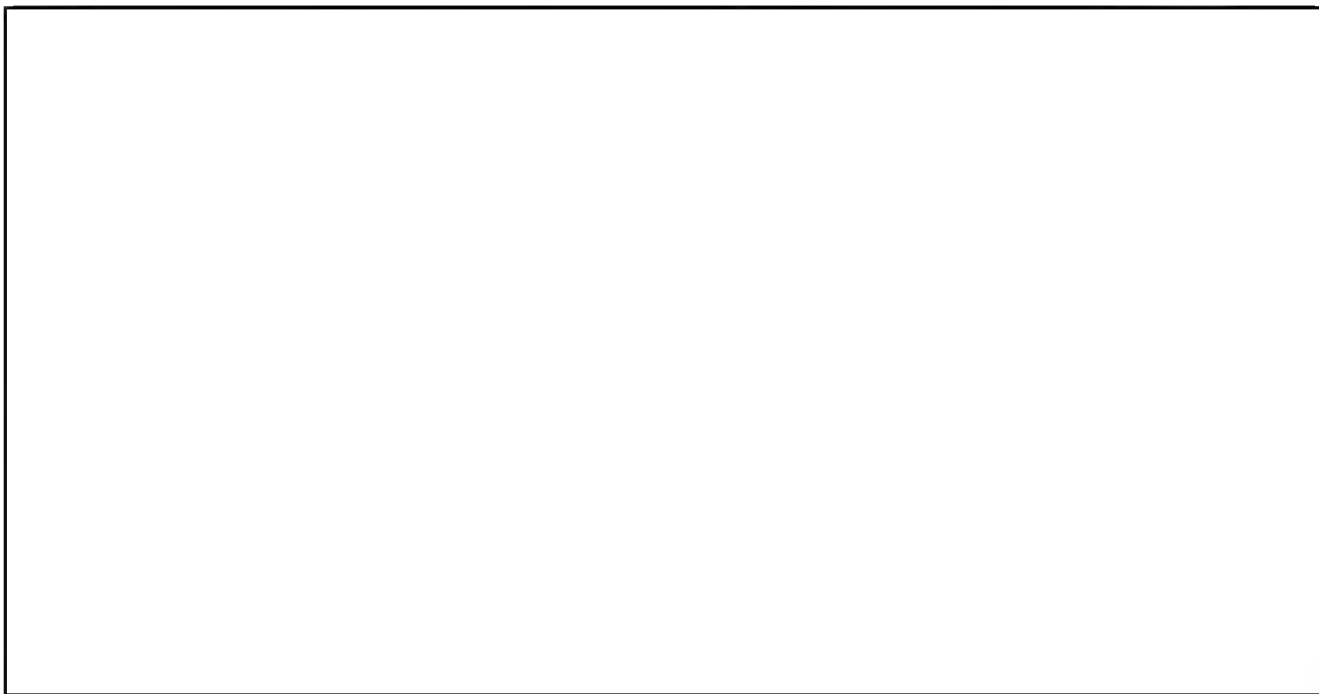
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SUBJECT: Proposed Legislation to Provide Policies and
Procedures for the Procurement of Property
and Services by Federal Agencies

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Chief
Procurement Management Staff, OL

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TRANSMITTAL SLIP		DATE
		17 September 73
TO: OGC Attn: <input type="text"/>		
ROOM NO.	BUILDING	
7D01	Headquarters	
REMARKS:		
Per our telephone conversation this morning.		
<input type="text"/>		
FROM: O-D/L		
ROOM NO.	BUILDING	EXTENSION
1206	Ames Center	<input type="text"/>
FORM NO. 241 1 FEB 55		REPLACES FORM 36-8 WHICH MAY BE USED. (47)

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NOTE ATTACHED TO OGC 73-1309